

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

WESTHEIMER REGENCY I, L.P.

Plaintiff,

v.

BALLY TOTAL FITNESS CORPORATION;
BLAST FITNESS ACQUISITION, LLC;
BLAST FITNESS PRESIDENTS SQUARE,
LLC; AND HAROLD DIXON,

Defendants.

CIVIL ACTION NO. 5:16-cv-00214

JURY DEMANDED

NOTICE OF REMOVAL

Defendant, Harold Dixon (“Dixon”) files this his Notice of Removal pursuant to 28 U.S.C. § 1446(a).

Introduction

1. On or about January 11, 2016, plaintiff Westheimer Regency I, L.P. (“Westheimer”) filed a lawsuit against Bally Total Fitness Corporation; Blast Fitness Acquisition, LLC; Blast Fitness Presidents Square LLC; and Harold Dixon, Cause No. 2016CI00441 in the 166th Judicial District Court of Bexar County, Texas.

2. Dixon received a copy of the complaint by certified mail on or about February 1, 2016.

3. Dixon filed an answer in state court on or about February 23, 2016.

4. Dixon has filed this notice of removal within the 30-day period required by 28 U.S.C. § 1446(b).

5. All Defendants have consented to this removal.

Bases for Removal

6. Removal is proper based on diversity of citizenship. 28 U.S.C. 1332(a). None of the Defendants are citizens or entities domiciled in Texas.

7. Plaintiff is alleged to be a limited partnership based in business in Texas.

8. Bally Total Fitness Corporation is alleged to be a foreign for-profit corporation although its state of incorporation is not alleged, but based upon information and belief, it is believed that Bally Total Fitness Corporation is a for profit corporation incorporated in the State of Delaware.

9. Blast Fitness Acquisition, LLC (“BFA”) is alleged to be a foreign for-profit corporation. Its state of incorporation is not alleged, but upon information and belief, articles of organization for BFA were filed in the State of Delaware. BFA is a wholly owned subsidiary of Blast Fitness Group, LLC (“BFG”) whose articles of organization were filed in the State of Massachusetts.

10. BFG is in Chapter 7 bankruptcy in Massachusetts, Massachusetts Bankruptcy Court Docket No. 16-10236. Only the Trustee, Attorney Gary W. Cruickshank, can act with respect to BFA, since it is a wholly owned subsidiary of BFG.

11. Blast Fitness Presidents Square LLC was allegedly never formed as a formal legal entity. To the extent it exists, it is a wholly owned subsidiary of or d/b/a BFA/BFG.

12. Mr. Harold Dixon is an individual and citizen of the State of Massachusetts.

13. Plaintiff has alleged damages in excess of \$1,000,000 and therefore the amount in controversy is in excess of the sum of \$75,000. Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332 and 1441(b).

14. All pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). [NEED TO GET]

15. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Bexar County, Texas, the place where the removed action has been pending.

16. A copy of this Notice of Removal will be filed with the Clerk of the 166th Judicial District Court of Bexar County, Texas.

Index of Attached Documents

17. The following is an index of documents attached to this Notice of Removal:

Exhibit 1: Certificate of Interested Parties

Exhibit 2: Copy of State Court Docket Sheet;

Exhibit 3: Plaintiff's Original Petition;

Exhibit 4: Civil Citation for Harold Dixon;

Exhibit 5: Defendant Harold Dixon's General Denial; and

Exhibit 6: Defendant's Notice of Removal Filed in State Court.

Jury Demand

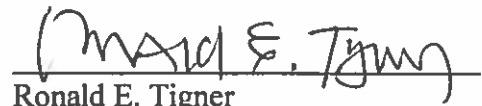
18. Defendant demands a jury trial.

Conclusion

For these reasons, Defendant Harold Dixon asks the Court to uphold this removal and to retain jurisdiction over this suit.

Respectfully submitted,

COZEN O'CONNOR



Ronald E. Tigner
Federal Bar No. 3095
Texas State Bar No. 20028000
LyondellBasell Tower
1221 McKinney, Suite 2900
Houston, Texas 77010
Telephone: (832) 214-3900
Telecopier: (832) 214-3905
rtigner@cozen.com

ATTORNEY FOR DEFENDANT
HAROLD DIXON

OF COUNSEL:

COZEN O'CONNOR
Ronald E. Tigner
Federal Bar No. 3095
Texas State Bar No. 20028000
LyondellBasell Tower
1221 McKinney, Suite 2900
Houston, Texas 77010
Telephone: (832) 214-3900
Telecopier: (832) 214-3905
rtigner@cozen.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document has been forwarded to all known counsel of record via the ECF, facsimile, and/or certified mail, return receipt requested on the 29th day of February, 2016.

Mr. Randall A. Pulman
Pulman, Cappuccio, Pullen, Benson & Jones, LLP
2161 NW Military Highway, Suite 400
San Antonio, Texas 78213
Fax: 210-892-1610

Mr. David M. Gottfried
Ms. Meghan Alexander
The Gottfried Firm
West Sixth Street
Austin, Texas 78703
Fax: 512-472-4013

Earl J. Acquaviva, Jr.
General Counsel
Bally Total Fitness Corporation
11400 Marvon Road
Baltimore, MD 21087
Office 410-853-4930
Fax 240-624-2520

Gary W. Cruickshank, Esq.
Chapter 7 Trustee, Blast Fitness Group, LLC.
21 Custom House Street
Suite 920
Boston, MA 02110


Ronald E. Tigner